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Subject: Waiver/Remission of Indebtedness Application dated March 12, 2018 (Debt ID #72690261855)
Date: Tuesday, June 04, 2019 8:13:00 AM

[REDACTED],

This e-mail is in response to your "Waiver/Remission of Indebtedness Application" dated March 12, 2018 and filed with the Cincinnati Finance Center. In a letter dated September 25, 2017 to you, the Interior Business Center (IBC) reports that the net amount of the debt is \$679.40 (Debt ID #72690261855). For the reasons set forth herein, your request for waiver is approved.

Background

Our records show that your Fair Labor Standards Act (FLSA) code should have changed from "non-exempt" to "exempt" when you were promoted to the GS-12 level; however, this change was not made. This debt is due to the processor neglecting to change your FLSA status to "exempt" when it was entered in FPPS. Human Resource Specialist positions are "non-exempt" from grades 5 through 11, then become "exempt" at grade 12. You had multiple career ladder promotions where your exemption did not change so it is reasonable that you would be unaware that your exemption should have changed when you were promoted to the grade 12.

The debt for you is due to the rate of overtime paid because of the incorrect FLSA code. As an "exempt" employee you would be entitled to the straight-time rate for overtime, not the time and one-half rate. As a result, for overtime earned between Pay Periods 09 through 11, 13 through 18, 21 through 23, and 26 of 2016, and Pay Periods 02 through 03 of 2017 you were paid the higher overtime rate. The Agency did not correct the error until Pay Period 20 of 2017, when you first became aware of the debt. It is unreasonable to believe that you were aware that your overtime pay rate was higher than it should have been.

Analysis

Section 5584 of Title 5 of the United States Code provides authority to waive claims for erroneous payments of pay and certain allowances made to federal employees, if collection of the claim would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria are met by a finding that the claim arose from an administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid. B-271308, April 18, 1996. An employee who has knowledge of a pay error or who should have been aware of a pay error is deemed to be at fault. In this regard, the case law indicates that an employee who knows or suspects that he/she has received an overpayment should be prepared to return any overpayment he/she has received, because it is not against equity or good conscience to collect an overpayment from the employee. Hawley E. Thomas, B-227322, Sept. 19, 1988; Richard W. DeWeil, B-223508, Dec. 24, 1986.

Here, the actions of the Agency caused the debt, when it failed to properly classify your position after your promotion to GS-12. The "non-exempt" designation continued for years after your

promotion. In this regard, in a prior waiver decision, the Claims Officer analyzed the FLSA overtime compensation rules and noted the complexity of the statutory and regulatory scheme:

"... the FLSA laws are not a model of clarity, and, in fact, require substantial expertise to understand overtime entitlements. Even the literature on FLSA overtime states repeatedly that there is considerable confusion over the designations "E" and NE" and entitlement to overtime pay. As one practitioner described it, "[a]pplication of exemptions for federal employees has been an area of confusion since the employees first came under the Act's coverage." Melissa Baumann, FLSA Exemptions for Federal Employees at 3. Moreover, over the years, the U.S. Department of Labor has recognized the need for simplification and clarity to its "complex" overtime regulation. 69 Fed. Reg. 22122, 22127 (2004) (discussing majority of commentary on regulatory revision); *Slusser v. Vantage Builders*, 576 F. Supp. 2d 1207 (D.N.M. 2008). Similarly, the U.S. Office of Personnel Management's website on FLSA Claim determinations illustrates some of the many reasons for potential confusion--multiple regulatory agencies, sets of regulations, differences in exemption criteria applied in various federal employment contexts, as well as sheer numbers of FLSA claim decisions and express cautionary notes. See www.opm.gov/flsa/about.asp. See generally Ethan Winning, *Employer and Employee Rights and Obligations* (2008)."

In addition, it was not until long after you performed the overtime hours and were paid for overtime at the "time and one-half rate" that the Agency discovered the error and corrected your classification to "exempt." I believe you reasonably assumed the overtime pay you received at the time was correct.

Based on the foregoing reasons, this waiver is granted. By copy of this e-mail sent to IBC, IBC is instructed to make any corrective pay action which may be necessary, including refunding any amount paid on this debt.